**COMMISSION FOR MENTAL HEALTH,
DEVELOPMENTAL DISABILITIES AND
SUBSTANCE ABUSE SERVICES
RULES COMMITTEE MEETING**

Rules Committee Minutes

**Cameron Village Regional Library
1930 Clark Avenue
Raleigh, NC 27605**

Thursday, May 6, 2010

Attending:
Committee Members: Jerry Ratley, Richard Brunstetter, Debra Dihoff, James Finch, Matthew Harbin, Emily Moore, Don Trobaugh, David R. Turpin

Excused Absences: Jennifer Brobst, John R. Corne, Cindy Ehlers, Thomas Fleetwood, Larry Pittman, Pamela Poteat

Division Staff: Steven Hairston, W. Denise Baker, Marta T. Hester, Amanda J. Reeder, Andrea Borden

Others: Betty Gardner, John Carbone, Emily Coward, Eli Albiston, Ann Ferrari, Susan Pollitt

Additional Handout: Letter from North Carolina Prisoner Legal Services, Inc.

Call to Order:
Jerry Ratley, Chairman called the meeting to order at 9:45 a.m. Mr. Ratley read the Ethics Reminder and asked if any member had a conflict of interest or appearance of conflict with respect to any matters that were coming before the Rules Committee. There were none. Mr. Ratley read the names of the members with excused absences.

Mr. Ratley announced that there was not a quorum of members present when the meeting began; therefore, the Committee would be unable to take action on any matters or vote on proposed rule changes until a quorum was present. Mr. Ratley asked staff to notify him when a quorum was present. Mr. Ratley reminded the Committee that it would begin its review with Rule 10A NCAC 26D .0704. Mr. Ratley announced that a quorum was present at 10:55 a.m.

Mr. Ratley informed the Committee members that Prisoner Legal Services and Disability Rights of North Carolina submitted comments on the proposed rules. Mr. Ratley stated that due to the volume of the comments, it would be difficult for the Committee to consider them at this time. Mr. Ratley stated that Commission leadership decided to treat the rules as public comments and will consider them after the publication of the rules. Steve Hairston, Chief, Operations Support Section, NC Division of Mental Health, Developmental Disabilities and Substance Abuse Services, added that the comments will be accepted now and will be placed in the comment grid for the Commission to consider after publication. The members of the Committee stated that they agreed with the plan, as it would ensure that the comments are given all due consideration.

Proposed Amendment/Adoption of 10A Subchapter 26D - NC Department of Correction: Standards for Mental Health and Mental Retardation Rules:

Betty Gardner, Senior Nurse Clinician and Quality Improvement Coordinator, NC Department of Correction, (DOC) presented the proposed amendment/adoption of 10A NCAC Subchapter 26D – NC Department of Correction: Standards for Mental Health and Mental Retardation. The proposed amendments and adoptions are being presented to remove obsolete language, include more person centered language, and reflect current practices within the Department of Correction.

Dr. James Finch, Committee member, asked Ms. Gardner if the standard of care within the Department of Correction is different than that in the community. Ms. Gardner stated that she worked in the community before coming to the DOC three years ago, so she is familiar with the standard of care used within the community. Ms. Gardner emphasized DOC must ensure the individual safety of everyone in the facility. Ms. Gardner explained that within the DOC mental health and developmental disability services, the term "therapeutic" restraint and seclusion is used to differentiate from custody restraint and seclusion. Ms. Gardner added that the DOC wishes to ensure safeguards are in place to assist inmates with mental illness and mental retardation, and the DOC tracks data regarding the number of times that "therapeutic" seclusion or restraint are used with this population. Ms. Gardner stated that the DOC uses therapeutic restraint much less often than found in the community; however, the seclusion rate is likely higher. Ms. Gardner reminded the Committee that the population can be challenging, and reiterated that DOC must make sure that the inmates and others are safe and secure. Ms. Gardner added that inmates can be assessed infractions for their behaviors, and they can then be transferred to segregation. Ms. Gardner added that therapeutic restraint is only used within residential or inpatient services within the DOC.

The following are recommendations from the Rules Committee members for these Rules:

Rule 10A NCAC 26D .0706:

1. Don Trobaugh and Dr. James Finch, Committee members, inquired about the contents of the client health record. Ms. Gardner informed them that the record contains several things, including mental heath, mental retardation and health treatment. Debra Dihoff, Committee member, stated that the definition for "client health record" clearly defined what is contained within the record.
2. Ms. Dihoff recommended putting the word "health" in (a).

Rule 10A NCAC 26D .0803:

1. David R. Turpin, Committee member, as well as Dr. Finch and Ms. Dihoff suggested that the language within (a) be amended to clarify that that the initial health screening shall encompass a mental health, mental retardation and health screening.
2. Dr. Finch inquired when the health screening occurs. Ms. Gardner replied that the health screening occurs upon the inmate's admission to prison.

Rule 10A NCAC 26D .0806: Dr. Richard Brunstetter, Committee member, and Dr. Finch suggested that the language within (b) "suicidal behavior" be replaced with "dangerous to self and others".

Rule 10A NCAC 26D .0901: Dr. Brunstetter suggested that language be added to (c) to reflect that the Chief of Mental Health Services shall be responsible for aftercare/discharge planning.

Rule 10A NCAC 26D .0902:

1. David R. Turpin, Committee member, suggested that the language within (b) be changed to state that inmates and family members could request treatment, rather than "refer" themselves. Ms. Dihoff agreed with the suggestion, and provided alternative language for use within the rule.
2. Emily Moore, Committee member, suggested that language be included to allow "interested persons" who know the inmate to request mental health or mental retardation treatment on the inmate's behalf.
3. Ms. Dihoff recommended defining "comprehensive assessment" with the language within subsection (c).

Rule 10A NCAC 26D .0904: Mr. Trobaugh, Dr. Finch and Mr. Turpin recommended amending the proposed language to make it clear that the DOC has 30 days from the inmate's admission to mental health or mental retardation services to develop the treatment or habilitation plan for that individual.

Upon motion, second, and unanimous vote the Rules Committee approved the proposed adoption of 10A NCAC 26D .0705 - .0906 as amended to be forwarded to the full Commission.

After the vote was taken, the Committee no longer had a quorum present but continued its discussion of the proposed rule changes and offered the following comments:

Rule 10A NCAC 26D .0908:

1. Ms. Moore suggested adding language to ensure that the inmate's family and interested persons may be invited to join the aftercare planning team.
2. Dr. Brunstetter expressed concern that the rules do not mandate that LMEs and providers attend the aftercare planning sessions. Mr. Ratley and Matthew Harbin, Committee member, both stated that they did not believe the Commission has authority to make that mandate. Ms. Dihoff suggested that the Commission consider looking at other rules within its authority to require their attendance.
3. Dr. Finch stated that he wanted to ensure that the LMEs were able to review the aftercare plans in advance and comment on them, especially if it would not be able to fund the requested services. Dr. Finch and Mr. Harbin suggested adding language that the DOC will confirm that the LME receives the aftercare plan. Additionally, Dr. Finch suggested changing the "may" in line 33 to "shall" to ensure that LME representatives are invited to the meeting.
4. Several Committee members inquired if the DOC has any legal authority to ensure that released inmates attend appointments with providers in the community. Mr. Ratley stated the DOC does not have authority over released inmates. Mr. Trobaugh asked if there was anyone within the community who had this authority. W. Denise Baker, Team Leader, Division Affairs Team, NC Division of Mental Health, Developmental Disabilities and Substance Abuse Services, stated that she was not aware of anyone within the mental health arena with this authority.
5. Ms. Baker asked Ms. Gardner who would be responsible for submitting the quarterly reports to the QI Committee, as set forth in subsection (g). Ms. Gardner responded that the DOP Social Work Director would be responsible for doing so. The workgroup recommended adding that language to the rule.
6. Several Committee members expressed an interest in having the DOC compile statistics regarding whether the LMEs participate in the aftercare planning process.

Ms. Baker informed the workgroup that Disability Rights of North Carolina is currently working on the Governor's taskforce to study recidivism rates, and the workgroup may wish to recommend that the taskforce address the issue.

Rule 10A NCAC 26D .1002: Mr. Trobaugh inquired about the existing rule language that requires family counseling and suggested that the language be removed.

Rule 10A NCAC 26D .1004: Mr. Trobaugh proposed changing the language within (a) from "privileged" to "licensed" or "qualified". The workgroup considered the appropriate language and decided it would be best to keep the current language.

Rule 10A NCAC 26D .1101: Dr. Brunstetter suggested adding "laboratory testing" to subsection (b).

Rule 10A NCAC 26D .1103:

1. Dr. Brunsetter inquired about the definition of "legend drug". Amanda J. Reeder, Rulemaking Coordinator, DMH/DD/SAS referred Dr. Brunstetter to the definition of the term within Rule .0103.
2. Dr. Brunstetter further inquired if inmates were permitted to self administer medications. Ms. Gardner stated that they are not allowed to self administer within the DOC mental health or mental retardation system, but they are allowed to do so within the DOC. Therefore, an inmate receiving mental health treatment may be allowed to self administer medications prescribed for treatment of a health condition. Ms. Moore asked if the DOC performed follow up when a client self administered medication. Ms. Gardner answered affirmatively.

Rule 10A NCAC 26D .1104:

1. Ms. Moore suggested adding language to ensure that the people close to the inmate can be contacted when he refuses psychotropic medication in subsection (e) of the rule. Mr. Harbin suggested language that would state that the inmate may name people in his signed release that the DOC may contact.
2. Ms. Gardner informed the Committee that DOC does not involuntarily administer medications in all facilities, but only in the inpatient and residential units.

The Committee ended its discussion with a review of Rule 10A NCAC 26D .1105.
Mr. Ratley asked the Committee how it wished to proceed with its review of the rules. The group recommended that they resume discussion of the rules at the July Rules Committee meeting. Mr. Ratley proposed beginning the review with Rule .1205 and then the proceeding rules to the end of the subchapter. Mr. Ratley stated that after the Committee finished those rules, it would address Rules 10A NCAC 26D .1202 and .1203, as those rules have already received considerable comments from several groups. The Committee members agreed with Mr. Ratley's suggestion.

Public Comment Period:
Susan Pollitt, Disability Rights of North Carolina (DRNC), thanked the group for the opportunity to address the members and stated that these are important rules. Ms. Pollitt added that DRNC believes that the DOC should use the community standard of care in reviewing the rules. Ms. Pollitt stated that seclusion and restraint are very dangerous and must be used only briefly. Ms. Pollitt stated that DRNC is involved in forums regarding inmate discharge and re-entry into the community. Mr. Trobaugh asked Ms. Pollitt how long she felt seclusion or restraint should be

used. Ms. Pollitt said that it should be as brief an intervention as possible, and ended when the inmate is no longer a danger to himself or others. Ms. Pollitt stated this is the standard set by the Centers for Medicaid and Medicare Services (CMS).

Ann Ferrari, Attorney with North Carolina Prisoner Legal Services, Inc., (PLS) stated that PLS agrees that the standard of care within the community should be used within DOC. Ms. Ferrari added that PLS proposed to limit the use of seclusion and restraint to emergency circumstances and only after less restrictive alternatives are attempted. PLS also believes that the duration and severity should be limited. Ms. Ferrari stated that seclusion and restraint are never therapeutic methods. Ms. Ferrari stated that while PLS worries about inmates with mental illness and mental retardation receiving infractions for behaviors relating to their diagnosis, they believe DOC can decide to not punish those inmates for their behaviors.

Emily Coward, Attorney with PLS, stated that PLS believes Rule .1104 should be amended to more closely parallel the rules regarding the Federal Bureau of Prisons. Ms. Coward stated that those rules are more protective.

There being no further business, the meeting ended at 2:20